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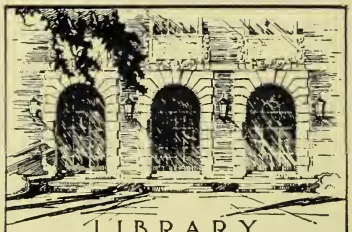
THE TWENTY EIGHT HOUR LAW ANNOTATED



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Issued October 12, 1909.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR.
GEO. P. McCABE, Solicitor.

THE TWENTY-EIGHT HOUR LAW ANNOTATED

ACT OF CONGRESS APPROVED JUNE 29, 1906,
C. 3594, 34 STAT. 607.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1909.

LETTER OF TRANSMITTAL.

U. S. Department of Agriculture,
Office of the Solicitor.
Washington, D. C., October 2, 1909.

Sir: I recommend the publication of the manuscript transmitted herewith, which is an annotation of the act of Congress approved June 29, 1906, commonly known as the "Twenty-eight Hour Law."

This annotation has been prepared under my direction by Mr. Otis H. Gates, Mr. W. Parker Jones, and Mr. R. W. Williams, jr., law clerks of this Office.

It is believed that this publication will be of material help to officers of the Government interested in the trial of cases under the act.

Respectfully,

Geo. P. McCabe,
Solicitor.

Hon. James Wilson,
Secretary of Agriculture.

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INTRODUCTION.

The original act of Congress to prevent cruelty to animals in interstate transit by common carriers was passed by the Forty-second Congress, third session, and approved by the President on March 3, 1873 (17 Stat. 584). This act was incorporated in the Revised Statutes of the United States, first edition, as sections 4386 to 4390, inclusive. Comparatively few cases went to trial under this statute, and it was repealed and supplanted by the present law, commonly known as the "Twenty-eight Hour Law," which was approved and became effective on June 29, 1906 (34 Stat. 607).

Since the present statute has been in effect a great number of cases reported by the Department of Agriculture to the Department of Justice for prosecution have been tried in the courts, and reports of some of these cases now appear in the volumes of the Federal Reporter. The Department of Agriculture has made a practice of publishing, in a series of circulars, decisions of the courts in cases involving salient points of the statute, for the use and information of officers of the Department, of common carriers, and of the United States courts and district attorneys. Many of the cases are in accord as to leading questions of construction of the statute. The decisions published in the Federal Reporter and the circulars of the Department have now reached considerable volume. The purpose of this annotation is to bring this material together in brief form and to furnish a convenient means of reference to these decisions of the courts construing the various parts of the statute.

This publication contains the "Twenty-eight Hour Law" annotated with brief abstracts from the decisions of the federal courts in cases that have been prosecuted under the act since it went into effect and up to the present time, including also abstracts from five cases and an opinion of the Attorney-General of the United States under sections 4386–4390 of the Revised Statutes of the United States, which are deemed to apply also to the present Twenty-eight Hour Law.

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THE TWENTY-EIGHT HOUR LAW ANNOTATED.

TEXT OF TWENTY-EIGHT HOUR LAW (ACT OF JUNE 29, 1906.)

AN ACT To prevent cruelty to animals while in transit by railroad or other means of transportation from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, and repealing sections forty-three hundred and eighty-six, forty-three hundred and eighty-seven, forty-three hundred and eighty-eight, forty-three hundred and eighty-nine, and forty-three hundred and ninety of the United States Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no railroad, express company, car company, common carrier[1] [a] other than by water, or the receiver, trustee, or lessee[2] of any of them, whose road forms any part of a line of road over which cattle, sheep, swine, or other animals[3] shall be conveyed from one State or Territory or the District of Columbia into or through another State[4] or Territory or the District of Columbia, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, shall confine[5] the same in cars, boats, or vessels of any description for a period longer than twenty-eight consecutive hours[6] without unloading the same in a humane manner, into properly equipped pens[7] for rest, water, and feeding,[8] for a period of at least five consecutive hours, unless prevented by storm or by other accidental or unavoidable causes[9] which can not be anticipated or avoided by the exercise of due diligence and foresight: *Provided*, That upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading, or other railroad form, the time of confinement may be extended to thirty-six hours.[10] In estimating[11] such confinement, the time consumed in loading and unloading shall not be considered, but the time during which the animals have been confined without such rest or food or water on connecting roads shall be included, it being the intent[12] of this act to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon the contingencies hereinbefore stated:[13]

[a] Figures refer to cross references given on page 9.

Provided, That it shall not be required that sheep[14] be unloaded in the nighttime, but where the time expires in the nighttime[15] in case of sheep the same may continue in transit to a suitable place for unloading, subject to the aforesaid limitation of thirty-six hours.

SEC. 2. That animals so unloaded shall be properly fed and watered during such rest either[16] by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or by the owners or masters of boats or vessels transporting the same, at the reasonable expense of the owner or person in custody thereof, and such railroad, express company, car company, common carrier other than by water, receiver, trustee, or lessee of any of them, owners or masters, shall in such case have a lien upon such animals for food, care, and custody furnished, collectible at their destination in the same manner as the transportation charges are collected, and shall not be liable for any detention of such animals, when such detention is of reasonable duration, to enable compliance with section one of this act; but nothing in this section shall be construed to prevent the owner or shipper of animals from furnishing food therefor, if he so desires.

SEC. 3. That any railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or the master or owner of any steam, sailing, or other vessel who knowingly[17] and willfully[18] fails to comply with the provisions of the two preceding sections shall for every[19] such failure be liable for and forfeit and pay a penalty[20] of not less than one hundred nor more than five hundred dollars: *Provided*, That when animals are carried in cars, boats, or other vessels in which they can and do have proper food, water, space, and opportunity to rest the provisions in regard to their being unloaded shall not apply.

SEC. 4. That the penalty created by the preceding section shall be recovered by civil[21] action in the name of the United States in the circuit or district court holden within the district[22] where the violation may have been committed or the person or corporation resides or carries on business; and it shall be the duty of United States attorneys to prosecute all violations of this act reported by the Secretary of Agriculture, or which come to their notice or knowledge by other means.

SEC. 5. That sections forty-three hundred and eighty-six, forty-three hundred and eighty-seven, forty-three hundred and eighty-eight, forty-three hundred and eighty-nine, and forty-three hundred and ninety of the Revised Statutes of the United States be, and the same are hereby, repealed.

Approved, June 29, 1906.

(1) *See* Parties Amenable, p. 12; Defenses, notes *a*, *b*, and *c*, p. 27.
(2) *See* Parties Amenable, note *d*, p. 12.
(3) *See* "Other Animals," p. 13.
(4) *See* Parties Amenable, notes *i*, *j*, and *k*, p. 13.
(5) *See* Period of Confinement, note *a*, p. 18.
(6) *See* Parties Amenable, note *f*, p. 13; "Knowingly," notes *f* and *g*, p. 14.
(7) *See* "Properly Equipped Pens," notes *a*, *b*, *c*, and *d*, p. 22; "Knowingly and Willfully," note *b*, p. 16.
(8) *See* Unloading for Rest, Water, and Feeding, p. 21.
(9) *See* "Knowingly and Willfully," p. 16; "Knowingly and Willingly," p. 18; "Accidental or Unavoidable Causes," p. 19; Evidence, note *d*, p. 25.
(10) *See* Constitutionality, notes *b* and *d*, p. 10; Thirty-six Hour Request, p. 27.
(11) *See* Period of Confinement, notes *b*, *c*, and *d*, p. 18; "Knowingly," notes *b*, *c*, *d*, and *e*, p. 14; Evidence, note *j*, p. 25.
(12) *See* Purpose, p. 11.
(13) *See* Defenses, note *e*, p. 27.
(14) *See* "Sheep," p. 20.
(15) *See* "In the Nighttime," p. 21.
(16) *See* Unloading for Rest, Water, and Feeding, note *e*, p. 21.
(17) *See* "Knowingly," p. 14; "Knowingly and Willfully," p. 16; "Knowingly and Willingly," p. 18.
(18) *See* "Willfully," p. 15; "Knowingly and Willfully," p. 16.
(19) *See* Unit of Violation, p. 22.
(20) *See* Assessment of the Penalty, p. 24.
(21) *See* Evidence, p. 24; Rule of Construction, p. 26; Depositions, p. 27; Writs of Error, p. 28.
(22) *See* Venue, p. 13; Constitutionality, notes *a* and *c*, p. 10.

ANNOTATIONS.

[Cases decided in 1907 and subsequently are under the act of June 29, 1906 (34 Stat. 607). Cases decided prior to 1907 are under sections 4386–4390 R. S. and are marked below with an asterisk.]

CONSTITUTIONALITY.

a. Since an action against an interstate carrier for violation of the statute is a civil action to recover a penalty, section 4, authorizing such action to be brought in the district where the violation may have been committed or the person or corporation resides or carries on business, is not unconstitutional as a violation of the Sixth Amendment to the Federal Constitution.

Southern Pacific Co. *v.* U. S., 171 Fed. 364. (C. C. A., 1909.)

b. The provision of the statute authorizing the owner or person in custody of a shipment of live stock to extend the time of confinement to thirty-six hours is not such a delegation of legislative power as renders the law unconstitutional.

Southern Pacific Co. *v.* U. S., 171 Fed. 360. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

c. An action under the Twenty-eight Hour Law, as provided in its fourth section, may lawfully be brought and tried in the district wherein the defendant resides or carries on business. This provision of the law is not in conflict with section 2 of article 3 of the Constitution, nor with the Sixth Amendment thereto.

St. Louis & San Francisco R. Co. *v.* U. S., 169 Fed. 69. (C. C. A., 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

d. The provision in the statute that live stock in transit may be continued up to thirty-six hours at the written request of the shipper does not constitute a delegation of legislative power or authority to the owner or shipper, and the act is not thereby made unconstitutional.

U. S. *v.* Oregon Railroad & Navigation Co., 163 Fed. 640 (1908). Circular No. 8, Office of the Solicitor, Department of Agriculture.

e. It is competent for Congress to provide for recovery of penalties imposed for violation of a statute either by a criminal or a civil action.

U. S. *v.* Chicago & North Western R. Co. (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

f. * The statute (secs. 4386–4390 R. S.) is directly within the terms of that clause of the Constitution which confers upon Congress the power to regulate commerce among the several States, and is constitutional.

U. S. *v.* Boston & Albany R. Co., 15 Fed. 209 (1883).

PURPOSE.

a. The purpose of the Twenty-eight Hour Law is to prevent any carrier from transporting animals in interstate commerce for a longer period than twenty-eight consecutive hours without unloading the same in a humane manner into properly equipped pens for rest, water, and feeding, for at least five consecutive hours.

U. S. *v.* Atlantic Coast Line R. Co. (C. C. A., 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

b. The object and purpose of this act is to prevent or reduce to a minimum the cruelty incident to the transportation of live stock.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

c. The act is a humane act, intended to prevent cruelty to animals, and the act also has in view the protection of the interests of owners of animals and of the public, in preventing their health and condition being injured in transit.

U. S. *v.* Pere Marquette R. Co., 171 Fed. 586 (1909). Circular No. 19, Office of the Solicitor, Department of Agriculture.

d. The real purpose of the statute is to alleviate the condition of dumb animals in transit.

U. S. *v.* Union Pacific R. Co., 169 Fed. 65. (C. C. A., 1909.) Circular No. 14, Office of the Solicitor, Department of Agriculture.

e. The act has a twofold purpose: To prevent the cruel treatment of animals in their handling and care, and to subserve the interests of the owner.

U. S. *v.* Oregon Railroad & Navigation Co., 163 Fed. 640 (1908). Circular No. 8, Office of the Solicitor, Department of Agriculture.

f. The primary purpose of the statute is to prevent cruelty to animals while in the course of transportation by railroad or other conveyance. It may also have been to prevent damages to the owner by reason of such confinement.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

g. The general purpose of the statute was to prohibit the inhuman treatment of domestic animals in the possession of common carriers.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

h. The object and purpose of the act is to insure the humane treatment of animals in their interstate transportation upon cars.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

i. * The statute (secs. 4386–4390 R. S.) was passed not more from considerations of sympathy for the cattle than to protect the public from imposition and from unwholesome food.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

PARTIES AMENABLE.

STOCKYARD COMPANIES AND RAILROADS.

a. A stockyards company authorized by its articles of incorporation to construct and maintain railroad tracks, and to own or lease and operate engines and cars for hire, which transports live stock delivered by other interstate railroad companies between their terminals and the stockyards, and hauls freight of the packing houses from one to the other, and cars loaded with ice or fuel to such houses from different railroads entering the city, is a railroad company or common carrier other than by water, within the Twenty-eight Hour Law, which prohibits any railroad or common carrier other than by water, whose road forms a part of a line of road over which animals shall be conveyed from one State to another, from confining the same for a longer period than twenty-eight consecutive hours without unloading.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

TERMINAL RAILROAD COMPANIES.

b. The Fort Worth Belt Railway Company, transporting live stock from railway terminals at Fort Worth, Texas, to Fort Worth Stock Yards, is amenable to the Twenty-eight Hour Law.

U. S. *v.* Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

c. * The Terminal Railroad Association of St. Louis or the St. Louis Merchants' Bridge Terminal Railway Company, which accept at St. Louis, Missouri, live stock which has been confined in cars of connecting railways for a period longer than twenty-eight hours without having been unloaded for rest, water, and feeding, and carry and deliver the stock across the Mississippi River to the National Stock Yards in Illinois, are liable to the penalty imposed by section 4386 R. S., unless the failure of the connecting carriers to unload was due to storm or other accidental causes, or unless the stock were carried in cars in which it had an opportunity for feed, rest, and water.

XXV Op. Atty. Gen. 411 (1905).

LESSEES.

d. The statute is aimed at the corporation actually operating the road. It assumes that the lessee is the active operator, and a declaration which, following the language of the statute, describes the defendant carrier as "lessee" is sufficient in this particular.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

CARRIERS IN GENERAL.

e. * Section 4386 R. S. is unambiguous, and is clearly designed to prevent any "railroad company within the United States whose railroad forms *any part of a line of road* over which cattle, sheep, swine, or other animals are conveyed from one State to another" from trans-

porting such animals under conditions other than those set forth in the statute.

XXV Op. Atty. Gen. 411 (1905).

f. *A railroad company which accepts stock for transportation when the animals have already been confined for more than twenty-eight consecutive hours without unloading for feed, rest, and water is undoubtedly liable to the penalty which sec. 4388 R. S. provides.

XXV Op. Atty. Gen. 411 (1905).

g. * The carrier with whom the contract for shipment is made is not liable for the penalty under sec. 4388 R. S. because others in the chain of connecting carriers violated the law after the stock had passed out of the control of the first carrier.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

h. * That carrier alone is liable for the penalty imposed by section 4388 R. S. which had actual manual possession of the animals at the expiration of twenty-eight hours after they were loaded.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

i. * The statute does not apply to lines which lie wholly within the territorial limits of a State.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

j. *A railroad company in a State, whose road forms a part of a line over which live animals are conveyed from another State, and which receives from connecting roads to be transported in the State animals which have been brought from another State, is engaged in interstate commerce, and is within the terms of sections 4386–4390 R. S.

U. S. *v.* Boston & Albany R. Co., 15 Fed. 209 (1883).

k. * Section 4386 R. S. by its terms imposes a penalty only upon railroads which convey swine, sheep, etc., from *one State to another.* It does not embrace a shipment of swine from one point to another within the same State over a line entirely within the State.

U. S. *v.* East Tennessee, Virginia and Georgia R., 13 Fed. 642 (1882).

VENUE.

Actions to recover penalties under the Twenty-eight Hour Law may be brought in any one of three districts—the district where the offense is committed; the district where the defendant resides; or a district where it carries on its business.

U. S. *v.* Chicago & North Western Ry. Co. (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

See also St. Louis & San Francisco R. Co. *v.* U. S., 169 Fed 69. (C. C. A., 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture. *Also* Southern Pacific Co. *v.* U. S., 171 Fed. 364. (C. C. A., 1909.)

"OTHER ANIMALS."

* The term "other animals" employed in the statute (sec. 4386 R. S.) includes mules and horses.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

"KNOWINGLY."

a. "*Knowingly*" in the Twenty-eight Hour Law simply means with knowledge of the facts.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

b. "*Knowingly*" in the Twenty-eight Hour Law means with a knowledge of the facts which taken together constitute the failure to comply with the statute. A carrier which receives from another a shipment of cattle with knowledge of how long they have been confined without rest, feed, or water, and prolongs the confinement beyond the statutory period, "knowingly" violates the law.

St. Louis & San Francisco R. Co. *v.* U. S., 169 Fed. 69. (C. C. A., 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

c. It is the duty of a railroad company holding itself out to transport live stock to *know* when shipments are delivered to it and to use reasonable diligence in ascertaining how long stock so delivered have been in the cars without unloading for rest, feed, and water.

U. S. *v.* Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

d. A railroad company *knowingly* violates the statute if it has knowledge of the fact that animals have not been unloaded for rest, feed, and water within the prescribed time, or if it has means of knowledge of which it is bound to avail itself and which if followed by diligent inquiry would have brought the fact home to it, whether it avails itself of such means or not.

U. S. *v.* Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

e. Common carriers are chargeable under the statute with knowledge not only of what its agents actually knew, but of what they could have ascertained by the exercise of reasonable inquiry.

U. S. *v.* Colorado & Southern Ry. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

f. A complaint to recover the penalties prescribed by the statute is fatally defective if it fails to allege that the defendant "knowingly" confined the animals in excess of twenty-eight hours. This is true even if the shipment was made exclusively upon the defendant's line of road.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

g. Plaintiff's allegation that cattle had been confined by a connecting carrier for nineteen and one-half hours, and were further "knowingly and willfully" confined by the defendant for a period less than twenty-eight hours, is not equivalent to an allegation that the defendant "knowingly" confined the animals in excess of twenty-eight hours, and the complaint is fatally defective.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

"WILLFULLY."

a. "Willfully" as used in the Twenty-eight Hour Law means intentionally and voluntarily.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

b. "Willfully" in the Twenty-eight Hour Law means purposely or obstinately, and is designed to describe the attitude of a carrier who intentionally disregards the statute, or is plainly indifferent to its requirements.

St. Louis & San Francisco R. Co. *v.* U. S., 169 Fed. 69. (C. C. A., 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

c. "Willfully" in the Twenty-eight Hour Law means only the intentional doing of an act forbidden by the statute.

U. S. *v.* Union Pacific R. Co., 169 Fed. 65. (C. C. A., 1909.) Circular No. 14, Office of the Solicitor, Department of Agriculture.

d. Defendant's admission in the answer that the company knowingly, that is intentionally, confined animals beyond the prescribed period, is an admission also that it was *willfully* done.

U. S. *v.* Union Pacific R. Co., 169 Fed. 65. (C. C. A., 1909.) Circular No. 14, Office of the Solicitor, Department of Agriculture.

e. The word "willfully" in the Twenty-eight Hour Law does not require that there should be an evil intent to constitute the offense, but it is sufficient if the act was done knowingly and purposely.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

f. The defendant, being a free agent, "willfully" violated the statute if it knew what it was doing and intended to do what it did.

U. S. *v.* Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

g. A carrier which receives stock after they have already been confined more than thirty-six consecutive hours, and delivers them at the next place where they can be unloaded for rest, food, and water with all reasonable dispatch, with the facilities is has for handling them, although it might have learned by inquiry that they had not been unloaded within the prescribed period, can not be held to have acted willfully in confining the cattle after it had received them, or to have participated in confining them any part of the time for which the penalty sought to be imposed was incurred.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

[Judgment in the foregoing case was affirmed on appeal on the following grounds: "An opinion of the trial judge, setting forth the reasons for his decision in an action at law tried by a circuit court without the intervention of a jury, can not be regarded as a special finding within the meaning of R. S. 649, 700." The court expressly refrained from expression upon the propositions of law advanced by the trial judge in support of his conclusion. Id., 167 Fed. 126. (C. C. A., 1909.)]

h. The word "willfully" in the statute can not be construed to denote evil intent. It is synonymous with "voluntarily" or "intentionally."

U. S. *v.* Atchison, Topeka & Santa Fe R. Co., 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

i. Failure to comply with the law is not *willful* if it is due to unavoidable causes.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

j. In a complaint to recover penalties under the statute, an allegation that the defendant acted willfully is equivalent to an allegation that unloading within the prescribed time was not prevented by storm or by other accidental or unavoidable causes.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

"KNOWINGLY AND WILLFULLY."

a. The words "knowingly and willfully" in the Twenty-eight Hour Law do not import an evil intent or motive. Lack of foresight and due diligence on the part of agents of a carrier engaged in the transportation of live stock is imputable to the carrier, and the consequent failure of agents, having knowledge of the facts concerning a particular shipment, to comply with the requirements of the law, is a willful failure, notwithstanding such precautions as the carrier may have taken to insure strict compliance by its conductors, agents, and other persons.

U. S. *v.* Atlantic Coast Line R. Co. (C. C. A., 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

b. It cannot be said that a carrier "knowingly and willfully" violated the law when, at the time the cattle were loaded, there was a reasonable expectation that they could be carried within the period prescribed by the statute to a place where properly equipped pens were available for rest, feed, or water, but the cattle were actually unloaded at an intermediate point into pens which were not properly equipped within the sense of the statute on account of an unexpected situation or emergency, *for which no fault is alleged against the carrier*, whereby it became impossible to convey the cattle within the prescribed period to the point where properly equipped pens had been provided by the carrier and were ordinarily used for the purpose.

St. Louis & San Francisco R. Co. *v.* U. S., 169 Fed. 69. (C. C. A., 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

c. To "*knowingly and willfully fail and neglect to feed or water said cattle*" is an offense only under the second section of the statute. The words are not sufficient to properly describe an offense under the first section. If the count, however, properly declares an offense under that section, these words may be stricken out as surplusage on motion, but if no motion is made therefor, they become immaterial matter.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

d. Averment by a defendant railroad company that horses were confined in violation of the statute, by reason of the "oversight, forgetfulness, and unintentional neglect" of its train dispatchers expressly negatives the claim that failure to rest and feed and water the horses was not the result of knowledge and willfulness on the part of the company.

Montana Central R. Co. *v.* U. S., 164 Fed. 400. (C. C. A., 1908.) Circular No. 12, Office of the Solicitor, Department of Agriculture.

e. A carrier knowingly and willfully violates the statute if it loads stock at one of its stations, when, according to the schedule or ordinary running time of the train, it can not reach a place where they may be unloaded and given rest, food, and water within the prescribed time, and they are not in fact given such rest, food, and water.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

f. In an action to recover the penalty prescribed by the statute, proof is not required that the defendant confined the animals with a malevolent purpose of cruelly torturing them, or of damaging the owner. The more reasonable interpretation of the words "knowingly and willfully" is that the penalty is incurred if the defendant knowingly and intentionally or purposely confined the stock beyond the twenty-eight or thirty-six hour period.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

g. A railway company "knowingly and willfully" violates the Twenty-eight Hour Law if the company, or its agents and servants who had charge of the shipments, knew, or by reasonable inquiry could have ascertained, the hour at which the sheep were loaded and that they had not been unloaded up to the time the cars came into their possession and it continues the confinement of the animals beyond their prescribed period.

U. S. *v.* Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

h. A carrier *knowingly and willfully* fails to comply with the requirements of the statute in respect to unloading, rest, and feeding, when the agents and servants in charge of the train knowingly confine animals for a period longer than that prescribed by the statute, provided they are not prevented from unloading to give them rest, by storm or other accident or unavoidable cause, which could not have been anticipated or avoided by the exercise of due diligence and foresight.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

i. The failure of an employee of a carrier to inform other employees that live stock were in the cars does not relieve the company from liability for having *willfully and knowingly* failed to comply with the provisions of the Twenty-eight Hour Law.

U. S. *v* Great Northern R. Co. (1907). Circular No. 1, Office of the Solicitor, Department of Agriculture.

j. In an action to recover the penalty prescribed by the Twenty-eight Hour Law, the United States must aver and establish by affirmative testimony the truth of the averment that the defendant did

"knowingly and willfully" fail to comply with the provisions of the statute.

U. S. *v.* Louisville & Nashville R. Co., 157 Fed. 979 (1907).

k. A carrier which receives live stock from a connecting carrier after the animals have been already confined beyond the period prescribed by the Twenty-eight Hour Law, and continues their transportation for several hours more before unloading, is liable for negligence *per se*. Whether the carrier knowingly and willfully fails to comply with the statute is a question for submission to the jury.

U. S. *v.* New York Central & Hudson River R. Co., 156 Fed. 249 (1907).

"KNOWINGLY AND WILLINGLY."

[The word "*willfully*" appears in the original act of March 3, 1873, but when this statute was incorporated in the Revised Statutes (sec. 4388) the word "*willingly*" was substituted therefor.]

*A carrier must be deemed to have "*knowingly and willingly*" violated the law, unless he was prevented from unloading for rest, food, and water as required by law by a cause which could not have been avoided by due care. Accident to a train due to negligence does not excuse the carrier.

Newport News & Mississippi Valley Co. *v.* U. S., 61 Fed. 488 (1894).

PERIOD OF CONFINEMENT.

a. The words "confine the same" mean no more than ordinary transportation of cattle in the ordinary railroad cars used for that purpose. A declaration in which words having the same effect are substituted for these words of the statute is not open to objection, certainly after verdict, and the requirements of the law in this particular are fully complied with.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

See also Unit of Violation, *infra.*

b. In estimating the period of confinement, time consumed in loading animals upon cars and in unloading them out of cars shall not be included as a part of the time during which a carrier has the right to confine the animals under the statute.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of Solicitor, Department of Agriculture.

See also "Sheep," *infra.*

c. A carrier which accepts for transportation live stock which has been already confined by a connecting carrier beyond the prescribed period, and continues to transport the animals for several additional hours before unloading the same, is prima facie guilty of a violation of the Twenty-eight Hour Law.

U. S. *v.* New York Central & Hudson River R. Co., 156 Fed. 249.

d. *The time during which animals have been confined without rest, water, or feed on connecting roads from which they are received

shall be included in estimating whether the animals have been confined beyond the period prescribed by the statute.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908), Circular No. 6, Office of Solicitor, Dept. Agriculture; U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883), XXV Op. Atty. Gen. 411 (1905).

"ACCIDENTAL OR UNAVOIDABLE CAUSES."

a. The failure of a conductor to examine a waybill on which a shipment of calves is noted is negligence on the part of the defendant company, and if in consequence the calves are confined beyond the period permitted by the Twenty-eight Hour Law the carrier is liable to the penalty thereby prescribed. It can not be contended that such failure was an "accidental or unavoidable" cause which could not have been anticipated or avoided by the exercise of due care and foresight.

U. S. *v.* Atlantic Coast Line R. Co. (C. C. A., 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

b. Great and unusual press of business, unexplained and of itself, is not an accidental or unavoidable cause which could not be anticipated or avoided by the exercise of due diligence and foresight within the meaning of section 1 of the act.

U. S. *v.* Union Pacific R. Co., 169 Fed. 65. (C. C. A., 1909.) Circular No. 14, Office of the Solicitor, Department of Agriculture.

c. Failure to provide unloading stations, congested traffic conditions reasonably to be anticipated from past experiences, and breakdowns en route, resulting from negligent operation or omission to furnish properly equipped and inspected engines and cars, are not *accidents or unavoidable causes* which can not be anticipated and avoided by due diligence and foresight.

U. S. *v.* Atchison, Topeka & Santa Fe R. Co., 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

d. To avail itself of a breakdown or wreck as an excuse for noncompliance with the statute, the carrier must show that the circumstances relied upon resulted from a cause which could not have been avoided by the exercise of due diligence and foresight.

U. S. *v.* Atchison, Topeka & Santa Fe R. Co., 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

e. Drunkenness of an employee of the defendant company and resulting failure to perform his duty is not such an accidental cause within the meaning of the statute as will excuse noncompliance with its terms.

U. S. *v.* Fort Worth Belt R. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

f. It is not an excuse under the Twenty-eight Hour Law for the railroad company to say that "we put our telegraphic service to work and got the men, but the men called went to sleep and we didn't know where to find them."

U. S. *v.* Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

g. A complaint to recover penalties under the statute is not defective for failure to allege that unloading was not prevented by storm or by other accidental or unavoidable causes, which could not be anticipated or avoided by the exercise of due diligence and foresight.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

h. In a complaint to recover penalties under the Twenty-eight Hour Law, an allegation that the defendant acted willfully is equivalent to an allegation that failure to unload within the prescribed time was not due to storm or other accidental or unavoidable causes.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of Solicitor, Department of Agriculture.

i. If the confinement of stock for a longer period than the statutory time results from an accident caused by the negligence of the company transporting the stock, the transportation company is liable under the statute.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

j. Mere press of business is no excuse for confining stock for a longer period than the time allowed by law.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

k. Sidetracking to allow passenger trains or fast freight trains the right of way is no excuse or defense for the violation of the law, if the meeting of such trains could have been anticipated at the time the stock train was dispatched from its loading point.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

l. * To avail itself of the excuse of storm, the carrier must show not only the fact of a storm, but that with due care he was prevented, as an unavoidable result of the storm, from complying with the law. No other accidental causes would be an excuse, unless the cause and effect are likewise unavoidable.

Newport News & Mississippi Valley Co. *v.* U. S., 61 Fed. 488 (1894).

"SHEEP."

a. The proviso of the statute "that it shall not be required that sheep be unloaded in the nighttime, but where the time expires in the nighttime, in case of sheep, the same may be continued in transit to a suitable place for unloading, subject to the aforesaid limitation of thirty-six hours," is not fatally defective for uncertainty, the meaning being that in case of sheep, if the twenty-eight hour limit expires at night, the transit may be continued to a suitable place for unloading, without the consent of the owner or custodian, except that in no case shall the thirty-six hour limit be exceeded.

Southern Pacific Co. *v.* U. S., 171 Fed. 360. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

b. In the case of sheep, when the twenty-eight hour limit expires in the night, the carrier may continue them without unloading until the expiration of thirty-six hours.

U. S. *v.* Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

c. The statute authorizes carriers to continue the confinement of sheep up to thirty-six hours, but no longer than thirty-six hours, even without the shipper's request, when the twenty-eight hour period expires in the nighttime. It is the duty of the carrier to unload the sheep on the preceding day if the thirty-six hour limit will expire in the nighttime; at the expiration of the thirty-six hours sheep must be unloaded, even in the nighttime.

U. S. *v.* Atchison, Topeka & Santa Fe R. Co., 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

d. The limit of time prescribed for the confinement of all animals, except sheep, is twenty-eight hours, except that when there is a written request for an extension of time they may be confined for thirty-six hours. In the transportation of sheep, if the twenty-eight-hour limit expires in the nighttime, the sheep may be continued in transit to a suitable place for unloading, up to thirty-six hours, without request, but not to exceed the limit of thirty-six hours, even if a request to so exceed the latter limit be made by the owner or shipper. When the limitation of thirty-six hours will expire in the nighttime, it is the duty of the carrier to unload the shipment of sheep before dark.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

"IN THE NIGHTTIME."

The words "in the nighttime" mean that period of time between the termination of daylight in the evening of one day and the earliest dawn of the next morning.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

UNLOADING FOR REST, WATER, AND FEEDING.

a. A declaration alleging that the defendant failed to unload the cattle "for rest, water, or feeding" is not open to objection on the ground alleged by the defendant that it would be sufficient if the cattle were unloaded for any purpose.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

b. It is the duty of the carrier having possession of the cattle when the twenty-eight hour limit is reached to unload the animals for food, water, and rest.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

c. * It is immaterial, in an action to recover a penalty under the statute, whether failure to *feed and water* the stock is due to the default of the shipper or the carrier. The act requires the shipper to feed and water the stock in the first instance, but if he fails the carrier must do it for him.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

"PROPERLY EQUIPPED PENS."

a. A railway company which voluntarily unloads cattle for rest, water, and feeding into pens which are not properly equipped for the purpose knowingly and willfully violates the law.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

b. Whether a pen is "properly equipped" within the meaning of the Twenty-eight Hour Law is a question of fact to be determined by the jury from the testimony offered in each case.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

c. It is assumed, but not decided, that the statute prohibits not merely the confinement of cattle beyond the prescribed period without rest, water, or food, but also unloading them into pens not properly equipped for rest, water, and feeding.

St. Louis & San Francisco R. Co. *v.* U. S., 169 Fed. 69. (C. C. A., 1909.) Circular No. 17, Office of the Solicitor, Department of Agriculture.

d. It is the duty of a carrier engaged in the interstate transportation of animals to provide a sufficient number of suitably equipped corrals or stock yards at which to unload stock, and in which said stock may have suitable care, food, water, and rest.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

UNIT OF VIOLATION.

a. Where several consignments of live stock, consigned to one consignee, are conveyed upon the same train, the unit in case of violation of the act is the individual shipment and not the carload.

Southern Pacific Co. *v.* U. S., 171 Fed. 360. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

b. Where a train contains shipments by two different consignors, each shipment not transported in conformity with the statute constitutes a separate offense.

U. S. *v.* New York, Chicago & St. Louis R. Co., 168 Fed. 699. (C. C. A., 1909.) Circular No. 16, Office of the Solicitor, Department of Agriculture.

c. Where there are several shipments of stock handled in one train, there are as many offenses against the statute as there are shipments confined beyond the prescribed period.

U. S. *v.* Atchison, Topeka & Santa Fe R. Co., 166 Fed. 160 (1908). Circular No. 4, Office of the Solicitor, Department of Agriculture.

d. When several consignments of cattle are transported on one or more trains, each consignment must be considered a unit in imposing the penalty.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

e. In an action to recover the statutory penalty for carrying stock in continuous transportation for more than twenty-eight hours with-

out rest, water, and feed, the shipment, and not the car or trainload, is the integer for the imposition of penalties.

U. S. *v.* Oregon Railway & Navigation Co., 163 Fed. 642 (1908). Circular No. 8, Office of the Solicitor, Department of Agriculture.

f. A single penalty is incurred for confining live stock beyond the period of twenty-eight or thirty-six hours, and the time of its confinement beyond that period is not material, unless it shall be for another period of twenty-eight or thirty-six hours, when it might be claimed that another penalty had been incurred.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

g. Where several shipments of live stock belonging to different owners are contained in the same train and the carrier fails to unload as prescribed by the statute, a penalty is recoverable for each shipment.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 159 Fed. 33. (C. C. A., 1908.) Circular No. 3, Office of the Solicitor, Department of Agriculture.

h. Each independent shipment or consignment of stock is the basis for determining whether a violation has been committed, and when a particular train is made up of several consignments of stock of various kinds from different consignors to the same or different consignees, and the entire trainload of stock is detained longer than the time prescribed by the statute, there are as many violations of the law as there are various shipments making up the aforesaid train.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

i. The time of confinement of a shipment of stock is to be reckoned from the completion of the loading at any given point to the commencement of the unloading of the stock at the next point along the route; and there are as many violations of the law as the periods of confinement between loading and the next unloading are in excess of the statutory time prescribed for such confinement between the point of original departure and the final destination of the shipment, even though they relate to the same stock or the same train.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

j. * Confinement of a trainload of cattle for a longer period than twenty-eight hours without unloading, when the cars constituted one train, and all the cattle were shipped by the same consignor to the same consignee at the same time, is a single offense. The unlawful confinement of each carload can not be held to constitute a separate offense, when the different cars make one train, and the shipment of cattle is one shipment.

U. S. *v.* St. Louis & San Francisco R. Co., 107 Fed. 870 (1901).

k. * The unlawful confinement of each animal in a trainload cannot be held to constitute a separate offense. The amount of the penalty assessed must be within the limits fixed by the statute (secs. 4386–4390 R. S.), that is, "not less than one hundred nor more than five hundred dollars."

U. S. *v.* Boston & Albany R. Co., 15 Fed. 209 (1883).

ASSESSMENT OF THE PENALTY.

a. The statute does not definitely fix the penalty, but prescribes for each violation a sum of not less than one hundred nor more than five hundred dollars. Determination of the amount which may be assessed in a particular case is a matter of discretion to be exercised by the trial court.

U. S. *v.* Atlantic Coast Line R. Co. (C. C. A., 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

b. In an action to recover a penalty under the Twenty-eight Hour Law, if the verdict is found against the defendant, it is necessary for the jury to assess the penalty within the limits prescribed by the statute.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

c. It is for the jury, if its verdict is for the United States, to assess the penalty within the limits prescribed by the statute.

U. S. *v.* Fort Worth Belt Ry. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

d. In an action to recover a penalty under the statute, it is for the jury to determine the facts, and if the verdict is against the defendant, to assess the penalty under the limits prescribed in the law.

U. S. *v.* Colorado & Southern Ry. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

e. After verdict in favor of the Government, the duty of fixing the amount of the penalty devolves upon the court.

U. S. *v.* Southern Pacific Co., 162 Fed. 412 (1908). Circular No. 9, Office of the Solicitor, Department of Agriculture.

f. Whether the law has been violated is a question of fact to be determined by the jury, and if the verdict is in favor of the United States and against the defendant, it is for the court to determine the amount of the penalty within the limits of the statute.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

g. *After verdict for the plaintiff, the amount of the penalty is to be determined by the court, within the limits prescribed by the statute (secs. 4386–4390 R. S.).

U. S. *v.* Boston & Albany R. Co., 15 Fed. 209 (1883).

h. * The plaintiff can sue only for the penalty prescribed by the statute (secs. 4386–4390 R. S.).

U. S. *v.* Boston & Albany R. Co., 15 Fed. 209 (1883).

EVIDENCE.

BURDEN OF PROOF.

a. The burden is on the Government to establish by a preponderance of the evidence the acts charged as constituting a violation of the Twenty-eight Hour Law.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

b. The statute provides a penalty to be recovered *by civil action.* It must be presumed that the usual incidents of all civil actions attach, one of which is that proof by a *reasonable preponderance of the evidence* is sufficient.

U. S. *v.* Southern Pacific Co., 162 Fed. 412 (1908). Circular No. 9, Office of the Solicitor, Department of Agriculture.

c. A suit under the statute is to be regarded as merely a *civil proceeding*, so far as the ordinary rules of pleading and proof are concerned. The United States are bound to support their case by only a preponderance of the evidence.

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

d. The burden is on the defendant to prove "other accidental or unavoidable causes."

U. S. *v.* New York Central & Hudson River R. Co., 165 Fed. 833. (C. C. A., 1908.) Circular No. 15, Office of the Solicitor, Department of Agriculture.

e. The burden is on the Government to prove its charge against the defendant by a preponderance or greater weight of the evidence, but not beyond a reasonable doubt.

U. S. *v.* Fort Worth Belt R. Co. (1908). Circular No. 11, Office of the Solicitor, Department of Agriculture.

f. A suit under the Twenty-eight Hour Law is not a criminal case, and the Government is not held to proof beyond a reasonable doubt, but by a preponderance or greater weight of the evidence.

U. S. *v.* Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

g. The burden of proof is not on the Government to show that the defendant was not prevented from unloading within the time prescribed, by storm or other accidental or unavoidable cause.

U. S. *v.* Oregon Short Line R. Co., 160 Fed. 526 (1908). Circular No. 6, Office of the Solicitor, Department of Agriculture.

h. The Government is not required to establish the acts constituting a violation of the statute beyond all reasonable doubt, but simply *by a preponderance of the evidence.*

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

i. The burden of proof is on the United States to establish every fact constituting an offense under the statute *to the exclusion of a reasonable doubt.*

U. S. *v.* Louisville & Nashville R. Co., 157 Fed. 979 (1907).

PRESUMPTIONS.

j. There is no presumption that cattle which have been transported by preceding carriers for twenty-eight or thirty-six hours have not been unloaded, fed, and watered within the required time. The presumption is that the preceding carrier had performed its duty under the law.

U. S. *v.* Sioux City Stock Yards Co., 162 Fed. 556 (1908).

k. There is no presumption in a prosecution under the statute, either of law or fact, that cattle have not been taken out, rested, watered, and fed by the owner or previous carrier, nor that the last carrier has received information of how long the cattle have been confined, nor how they have been treated. The burden is on the Government to establish these facts affirmatively beyond reasonable doubt.

U. S. *v.* Louisville & Nashville R. Co., 157 Fed. 979 (1907).

RULE OF CONSTRUCTION.

a. The maxims and rules of interpretation require that we have regard to all provisions of the statute, and, if possible, attribute to the language of each a meaning which will permit other provisions to have their due effect.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 159 Fed. 33. (C. C. A., 1908.) Circular No. 3, Office of the Solicitor, Department of Agriculture.

b. A suit to recover a penalty under the Twenty-eight Hour Law is treated as being a civil proceeding.

U. S. *v.* Atlantic Coast Line R. Co. (C. C. A., 1909.) Circular No. 21, Office of the Solicitor, Department of Agriculture.

c. An action to recover a penalty under the Twenty-eight Hour Law is civil in form, although undoubtedly criminal in its nature.

U. S. *v.* Chicago & North Western R. Co. (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

d. In determining the jurisdiction of the court, or, in other words, the venue, an action to recover a penalty under the Twenty-eight Hour Law is to be regarded as a civil action.

U. S. *v.* Chicago & North Western R. Co. (1908). Circular No. 5, Office of the Solicitor, Department of Agriculture.

e. An action to recover the penalty prescribed by the statute is a *civil* action.

U. S. *v.* Southern Pacific Co., 162 Fed. 412 (1908). Circular No. 9, Office of the Solicitor, Department of Agriculture.

f. An action to recover the penalty prescribed by the statute partakes of the ordinary incidents of a civil action, and is subject to the rules of construction and of evidence which are applied in civil actions.

Montana Central R. Co. *v.* U. S., 164 Fed. 400. (C. C. A., 1908.) Circular No. 12, Office of the Solicitor, Department of Agriculture.

g. The statute is penal and is not to be extended beyond the fair meaning of the language employed.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 159 Fed. 33. (C. C. A., 1908.) Circular No. 3, Office of the Solicitor, Department of Agriculture.

h. The statute is penal and criminal and must be strictly construed, but not so strictly as to defeat the intention. The rule of construction is not changed because Congress has provided that proceedings for the enforcement of the statute shall take the form of civil suits.

U. S. *v.* Louisville & Nashville R. Co., 157 Fed. 979 (1907).

i. * The statute (secs. 4386–4390 R. S.) is highly penal and must be construed as strictly as if it were a statute creating a criminal offense. Nothing can be imported by construction which is not within its spirit and letter.

U. S. *v.* St. Louis & San Francisco R. Co., 107 Fed. 870 (1901).

THIRTY-SIX HOUR REQUEST.

a. Under the statute the shipper or person in charge of the stock can not by consent or agreement relieve the company from the penalties imposed therein. He may, however, authorize the carrier to extend the period of confinement from twenty-eight to thirty-six hours.

U. S. *v.* Southern Pacific Co. (1909). Circular No. 20, Office of the Solicitor, Department of Agriculture.

b. The statute can not be so construed as to permit the owner of live stock to file a general request with the railroad company, applicable to all his shipments in the future, with a view to extending the time of confinement of all shipments from twenty-eight to thirty-six hours. Such a construction would nullify the general intent of Congress to limit the time of confinement to twenty-eight hours. There should be a separate written request for each particular shipment.

U. S. *v.* Pere Marquette R. Co., 171 Fed. 586 (1909). Circular No. 19, Office of the Solicitor, Department of Agriculture.

DEFENSES.

a. Delivery of animals by a carrier to the consignee within the limit of time prescribed by the statute is sufficient to relieve the defendant from further responsibility under the act.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

b. Delivery of animals by the defendant to a connecting carrier within the limit of time prescribed by the statute is sufficient to relieve the defendant from further responsibility.

U. S. *v.* Southern Pacific Co., 157 Fed. 459 (1907). Circular (unnumbered), Office of the Solicitor, Department of Agriculture.

c. Circumstances which release the carrier from liability under the statute are provided therein; the court and jury have no right to find exceptions outside the statute.

U. S. *v.* Colorado & Southern R. Co. (1908). Circular No. 7, Office of the Solicitor, Department of Agriculture.

d. *A carrier with which the contract for shipment of live stock is made and which of itself does not confine the animals beyond the period prescribed is not liable for the penalty imposed by sec. 4388 R. S. because connecting carriers violated the law after the stock had passed out of the control of the first carrier.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

DEPOSITIONS.

* The plaintiff may follow the state practice in taking depositions.

U. S. *v.* Louisville & Nashville R. Co., 18 Fed. 480 (1883).

WRITS OF ERROR.

a. When an action under the Twenty-eight Hour Law *in a district court*, triable by jury under section 566 R. S., is by consent of the parties tried to the court without a jury, no question of fact or law decided upon or in connection with the trial is subject to reexamination in an appellate court. Sections 649, 700, R. S., providing for waiving a jury and for the review of judgments rendered in causes when there is such waiver, relate exclusively to trials in circuit courts.

U. S. *v.* St. Louis, Iron Mountain & Southern R. Co., 169 Fed. 73. (C. C. A., 1909.)

b. The United States, as a matter of right, may have a writ of error to review a judgment rendered under the Twenty-eight Hour Law, for the action to recover a penalty under the law is civil.

U. S. *v.* New York, Chicago & St. Louis R. Co., 168 Fed. 699. (C. C. A., 1909.) Circular No. 16, Office of the Solicitor, Department of Agriculture.

c. In an action to recover a penalty under the Twenty-eight Hour Law, the sufficiency of the facts found to support the judgment are not open to review in the Circuit Court of Appeals in the absence of a special finding in the defendant's favor. The special finding contemplated by sections 649, 700, R. S., is a specific statement of those ultimate facts on which the law must decide the rights of the parties. It corresponds to the special verdict of a jury, is equally specific and responsive to the issues, and is spread upon the record in like manner as is such a verdict. An opinion of the trial judge, setting forth the reasons for his decision in an action under the Twenty-eight Hour Law, tried by a circuit court without the intervention of a jury, can not be regarded as such special finding.

U. S. *v.* Sioux City Stock Yards Co., 167 Fed. 126. (C. C. A., 1909.)

d. Congress has provided that the remedy shall be by civil action, and, although the statute is penal, the Government is entitled to have a judgment in such action reversed by writ of error.

U. S. *v.* Baltimore & Ohio Southwestern R. Co., 159 Fed. 33. (C. C. A., 1908.) Circular No. 3, Office of the Solicitor, Department of Agriculture. *See also* Montana Central R. Co., 164 Fed. 400. Circular No. 12, Office of the Solicitor, Department of Agriculture.

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